



RAVALLI COUNTY ATTORNEY

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MEMORANDUM

RECEIVED

FEB 26 2008

Ravalli County Commissioners

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TO: Ravalli County Commissioners

FROM: Alex Beal *AB*
Ravalli County Deputy Attorney

DATE: February 26, 2008

RE: Subdivision School Mitigation Fees v. Impact Fees

Commissioner Rokosch has asked what affect the impact fee bill has on the mitigation fees that the Commission has historically collected on behalf of School Districts at the time new lots are created. His concern was specifically in regard to a letter that our office sent on July 27, 2006, to the Florence-Carlton School District.

We had noted at that time that Florence-Carlton School District was requesting a specific amount of money as mitigation for subdivisions. That specific amount of money was derived from a number of factors including the expenses of expanding the school's capital facilities. As such, that amount contained both capital and non-capital costs. These subdivision mitigation fees cannot collect capital costs.

Your historical collection of fees for the benefit of the schools has not generally derived from a specific, detailed request from the Districts and so that issue does not exist. I believe that the school districts have always understood that those fees when paid to the districts are only to be used for non-capital expenditures. So long as they use the funds in that way, they do not conflict with the impact fee bill.

RECEIVED (148)

JUL 28 2006



Ravalli County Planning Dept.

IC-06-07-1216

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July 27, 2006

Via Facsimile/U.S. Mail & E-Mail

John McGee, Superintendent
Florence-Carlton School
5602 Old Hwy 93
Florence, MT 59833

Re: Subdivision exactions for schools

Dear John:

I am writing in follow up to the conversation of last Wednesday between yourself and my deputy James McCubbin, regarding arguments made by Missoula Attorney Cal Christian on legal limitations for requiring subdividers to provide funding for schools. As James had noted, Cal Christian had called James Wednesday morning to let him know Mr. Christian would be making various arguments in front of the Planning Board Wednesday evening. The most significant of these arguments, which he did present to the Planning Board, was that Section 76-3-510, MCA, prohibits a county from requiring a subdivider to make payments that would contribute to, or be based upon the expense of, expanding a school's capital facilities. The full text of that statute is as follows:

76-3-510. Payment for extension of capital facilities. A local government may require a subdivider to pay or guarantee payment for part or all of the costs of extending capital facilities related to public health and safety, including but not limited to public roads, sewer lines, water supply lines, and storm drains to a subdivision. The costs must reasonably reflect the expected impacts directly attributable to the subdivision. A local government may not require a subdivider to pay or guarantee payment for part or all of the costs of constructing or extending capital facilities related to education.

It appears from the comment letters from the Florence-Carlton School District on subdivisions, that the sums which you have requested are calculated, at least in part, based upon the anticipated expense of extending the school's capital facilities. I note this because the

school district's comment letters have referenced calculation of your requested figure based, at least in part, upon the type of information which would support imposition of impact fees. As impact fees can only be used to cover the expense of expanding capital facilities, it appears that the subdivision figures which you are requesting have been based on capital expenses. As such, under the language of the statute cited by Mr. Christian and included above, it appears that the County is prohibited from requiring subdividers to make the financial contribution requested by the school district.

I anticipate that the legal arguments raised by Cal Christian will be quickly seized upon by others in the development community. I anticipate that these arguments and the statutes cited above will most likely be raised as issues with respect to other subdivisions in the Florence-Carlton School District. If you, or the School Boards Association attorneys, have an alternate analysis of the foregoing statute, it would be most helpful if we could receive that analysis as soon as possible, and preferably prior to the Planning Board's deliberations on the Aspen Springs subdivision next Wednesday, August 2, 2006.

It would also be very useful to receive an explanation from the school district regarding the calculation of the figures you previously requested, so that we may break out which portion of the figure was for anticipated capital expansion, versus non-capital expenses such as operations, maintenance, books, etc. We are able to negotiate payments to schools for non-capital expenses through the subdivision review process.

As I had noted to you over the telephone, the limitation in the statute cited above does not make sense to me from my public policy perspective. Nonetheless, the legislature's enactment of the statute, however misguided, does appear to limit the county's ability to mitigate impact from subdivisions with respect to schools. I am hopeful that the School Boards Association attorneys might perceive this differently and provide us with an alternate analysis. Please also share this information with your School Board members. I will look forward to hearing back from you at your earliest convenience.

Sincerely,



George H. Corn
Ravalli County Attorney

DJM/jw

cc: Montana School Boards Association: Lance Melton and Debra Silk
Ravalli County School District Superintendents